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EXAMINER

NEURAUTER, GEORGE C

ART UNIT

PAPER NUMBER

2143

DATE MAILED: 09/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



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**DETAILED ACTION**

Claims 1-4, 6-9, 11-14, and 16-19 are currently presented and have been examined.

***Election/Restrictions***

Applicant's election with traverse of invention I in the reply filed on 5 June 2006 is acknowledged. The traversal is on the ground(s) that invention II is a more specific implementation of the broader invention claimed in invention I since the sequence of pause and resume transmission signals are used by the server to limit an average rate of transmission and are therefore not distinct. This is not found persuasive because, as shown previously by the Examiner, within invention I, a server limits the rate of transmission to a requesting computer by using a speed indication signal sent from a requesting computer whereas, within invention II, a requesting computer limits the rate of transmission of data from a server by generating a schedule using pause and resume transmission signals based on a user input speed setting at the requesting computer. The Examiner notes that claims 5, 10, and 15 specifically recite "sending, according to the schedule, a sequence of pause transmission and resume transmission signals from the client computer to a server computer". This limitation specifically limits the transmission of these signals from the

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client, not the server, therefore, the client controls the rate of transmission by sending these signals.

The requirement is still deemed proper and is therefore made FINAL.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-4, 6-9, 11-14, and 16-19 as presented in the response filed 23 October 2005 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Objections***

Claims 1-4, 6-9, 11-14, and 16-19 are objected to because of the following informalities:

Claims 1, 6, and 11 recite "...the specified data item to be delivered in its entirety prior to being accessed..." For the sake of clarity, it is suggested by the Examiner that this limitation should read "...the specified data item to be delivered in its entirety prior to being accessed by the requesting computer..."

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-2, 4, 6-7, 9, 11-12, 14, and 16-19 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent 6 014 707 A to Miller et al.

Regarding claim 1, Miller discloses a communication method for transmitting data from a server to a requesting computer (referred to within Miller as "client"), said method comprising steps of:

receiving a request for a specified data item at the server ("DownloadStart" message; see column 7, lines 4-34 of Miller), the specified data item to be delivered in its entirety prior to being accessed; receiving at the server, in conjunction with receiving the request for the specified data item, a speed indication signal ("delay" field within the "DownloadStart" message; column 7, lines 28-29) at the server from the requesting computer, wherein the speed indication signal comprises an indicated speed of transmission of the specified data item; and limiting an average rate of transmission of at least a portion of the specified data item across a data link to

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the requesting computer to be not greater than the data rate of the data link and less than the data rate capacity of the requesting computer. (column 2, lines 32-41; column 2, line 63-column 3, line 1; column 5, lines 34-50; column 8, lines 6-21; column 11, lines 61-65)

Regarding claim 2, Miller discloses a communication method according to claim 1 in which the limiting step comprises substeps of:

determining a block size based at least on the average transmission rate; determining a period based on the average transmission rate, wherein the period is longer than the period required to transmit the block size at the data rate of the data link; and transmitting a plurality of blocks of data, each of the blocks having the block size and being transmitted at intervals substantially equal to the period. (column 10, lines 24-36; column 10, line 53-column 11, line 9)

Regarding claim 4, Miller discloses a communication method according to claim 1 further comprising steps of reading the specified data item from a memory associated with the server. (column 9, line 56-column 10, line 11)

Claims 6-7, 9, 11-12, and 14 are also rejected since claims 6-7 and 9 recite a communication system and claims 11-12 and 14

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recite a computer readable medium that contain substantially the same limitations as recited in claims 1-2 and 4 respectively.

Regarding claim 16, Miller discloses the method according to claim 1, wherein the indicated speed is not related to a speed that is associated with the specific data item. ("Maximum rate at which packets can be processed"; column 5, lines 34-49, specifically lines 41-42)

Claims 17 and 18 are also rejected since these claims recite substantially the same limitations as recited in claim 16.

Regarding claim 19, Miller discloses the method according to claim 1, further comprising:

receiving at the server, from the requesting computer, a new speed indication signal contains a new indicated speed, the new speed indication signal being received subsequently to the receiving the request and subsequently to limiting the average rate of transmission; and limiting, in response to receiving the new speed indication signal, the average rate of transmission of at least a portion of the specified data item across a data link to the requesting computer to be not greater than the new indicated speed contained within the new speed indication signal, wherein the new indicated speed is less than the data rate of the data link and less than the data rate capacity of

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the requesting computer. (column 6, lines 4-8; see also references as shown in claim 1)

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary.



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Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 3, 8, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller in view of US Patent 5 991 810 to Shapiro et al.

Regarding claim 3, Miller discloses a communication method according to claim 1.

Miller does not disclose wherein the method further comprises the steps of accessing a remote computer indicated in an address included in the request, wherein the remote computer is not one of the server and the requesting computer and receiving, at the server, the specified data item from the remote computer, however, Shapiro does disclose these limitations (column 1, lines 25-44).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of these references since Shapiro discloses that using a server to access a remote computer to receive a specified data item allows the server to process a requesting computer's request for

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specified data items without the requesting computer having to make a specific connection to the remote computer (column 1, lines 30-33). In view of these specific advantages and that the references are directed to sending specified data items to a requesting computer, one of ordinary skill would have been motivated to combine these references and would have considered them to be analogous to one another based on their related fields of endeavor, which would lead one of ordinary skill to reasonably expect a successful combination of the teachings.

Claims 8 and 13 are also rejected since these claims recite substantially the same limitations as recited in claim 3.

### **Conclusion**

The prior art listed in the PTO-892 form included with this Office Action disclose methods, systems, and apparatus similar to those claimed and recited in the specification. The Examiner has cited these references to evidence the level and/or knowledge of one of ordinary skill in the art at the time the invention was made, to provide support for universal facts and the technical reasoning for the rejections made in this Office Action including the Examiner's broadest reasonable interpretation of the claims as required by MPEP 2111 and to evidence the plain meaning of any terms not defined in the specification that are interpreted by the Examiner in accordance

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with MPEP 2111.01. The Applicant should consider these cited references when preparing a response to this Office Action.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George C. Neurauter, Jr. whose telephone number is (571) 272-3918. The examiner can normally be reached on Monday through Friday from 9AM to 5:30PM Eastern.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

gcn



JEFFREY PWU  
EXAMINER